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# Guidance on Fair Recruitment Practices for Temporary Migrant Workers

## OVERVIEW

The Biden-Harris Administration's Collaborative Migration Management Strategy is based on the belief that all individuals should be able to find safety and achieve stable and dignified lives within their own countries. If they do migrate, they should do so under conditions that are safe, orderly, regular, transparent, and humane.

As the U.S. Government works to expand access to lawful pathways for migration in the countries of Northern Central America through the H-2 programs (the H-2A program for Temporary Agricultural Workers and the H-2B program for Temporary Non-Agricultural Workers), governments in the region have a responsibility to ensure that worker recruitment in their own countries does not lead to abuse of migrants. This abuse includes labor exploitation, human trafficking, and gender-based violence. Employers that use the H-2 programs share this responsibility through obligations under U.S. law. Deterring unscrupulous actors from preying on migrant workers requires swift, sustained, and effective government action and private sector best practices.

Expanding access to lawful migration channels and protecting migrant workers' rights are two aspects of the same agenda. Successful expansion of access to lawful pathways for migration depends on ensuring that migrants' rights and dignity are protected, both in the country of origin and in the United States. Protecting migrants' rights depends on offering migrants safe, orderly, and regular alternatives to irregular migration and its numerous dangers and indignities.

Each year the U.S. Government designates a list of countries whose nationals are eligible to participate in the H-2A and H-2B programs. In the past, a record of human trafficking in these programs or other abuses, such as the collection of recruitment fees that are prohibited under U.S. law, has led to the removal of particular countries from the list.

This non-binding guidance document is intended to assist governments of countries of origin, recruiters, and employers in achieving fair recruitment of workers bound for employment in the United States under the H-2 visa programs. It can also serve as an important resource for retailers and other downstream supply chain actors to understand how to identify, mitigate, respond to and ultimately help prevent abuses in the worker recruitment process by actors in their supply chains who recruit and/or use H-2 workers.

The U.S. Government urges countries of origin to participate in the International Labor Organization's (ILO) Fair Recruitment Initiative (FRI) by engaging directly with the ILO. The FRI, based on international labor standards as well as the [ILO Guiding Principles and Operational Guidelines for Fair Recruitment](#) (ILO *Guidelines*), provides a set of tools and principles to create and maintain fair recruitment systems. Training, resources, and technical assistance, from the ILO and other sources, can help enable governments to develop short and long-term strategies and goals to achieve fair recruitment systems tailored to individual country circumstances.

Regulations governing the H-2A and H-2B programs already bind U.S. employers to requirements such as bearing the costs of transportation and recruitment, paying legally required wages, and hiring qualified and available U.S. workers before foreign workers. These regulations reflect many of the principles outlined in the ILO *Guidelines*.

Recruitment conducted in compliance with these regulations and with direction from the ILO *Guidelines* can prevent abuse and provide employers with an increased level of assurance that recruiters are complying with program requirements, which lowers the employer's risk of regulatory violations that may subject them to adverse action from the Department of Labor (DOL), such as debarment and revocation of the labor certification. In addition, employers and other downstream supply chain actors should be aware of criminal prohibitions related to forced labor and benefitting from forced labor (18 U.S.C. § 1589) and fraud in foreign labor contracting (18 U.S.C. § 1351). Reliance on the ILO *Guidelines* may also reduce the risk that prospective workers will be denied visas at the U.S. consulate as a result of having paid prohibited fees. Knowing that certain recruiters are engaged in fair recruitment will provide strong incentives for employers to cut ties with unscrupulous recruiters and look for workers recruited fairly through the H-2 programs when they cannot find U.S. workers to fill vacancies.<sup>1</sup>

<sup>1</sup> The identity of recruiters of H-2B workers is available in the [Foreign Labor Recruiter List](#) on DOL's website. Employers in the H-2B program are required to provide the identity and location of all persons and entities hired by or working with recruiters of prospective foreign workers for H-2B job opportunities. Note: DOL does not endorse any foreign labor agent or recruiter included in the Foreign Labor Recruiter List, nor does inclusion on this list signify that the recruiter is in compliance with the H-2B program.

## GUIDANCE

This guidance is based, in large part, on existing DOL regulations governing the H-2A and H-2B programs and the ILO *Guidelines*. It does not replace the requirements in DOL regulations, and it is not intended to duplicate the ILO *Guidelines* in their entirety. Rather, it aims to highlight and promote implementation of key best practices by governments in countries seeking to increase participation in the H-2 visa programs and by employers relying on these programs.

### Recruitment infrastructure and processes

- Laws and regulations governing all stages of the recruitment process—including advertising, information distribution, selection, transport, placement into employment and return to the country of origin where applicable—should be clear and transparent, and governments should enforce compliance;
- Governments should design measures, such as public registration, licensing or certification of recruiters, and systems that permit workers and other interested parties to verify the legitimacy of recruitment agencies and placement offers;
- The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including imposing appropriate penalties on recruiters who engage in such practices; and
- Labor inspectorates should be adequately trained and resourced to effectively monitor and evaluate the operations of all labor recruiters.

### Protecting fundamental worker rights

- Governments should ensure that recruitment takes place in conditions that respect and protect fundamental worker rights. This entails:
  - » Prohibiting discrimination against applicants based on sex, age, or race, or for any reason other than lawful, job-related reasons;
  - » Implementing measures to prevent and eliminate forced labor and child labor; and
  - » Respecting the right to freedom of association and collective bargaining.

### Ensuring transparency and access to redress for workers and job applicants

- Governments should take measures to prevent recruiters from soliciting or collecting money from workers in exchange for offering them employment contracts and ensure that recruiters do not charge workers or jobseekers any recruitment fees,<sup>2</sup> certification fees, or other related costs;
- Governments should require recruiters to make clear all terms and conditions of a worker's employment, detailed in a written contract in a language the worker can understand. The work contract should contain all significant conditions of employment and be provided to the worker, in a language they understand, prior to the worker departing their country of origin for the United States. Retailers and other downstream supply chain actors should require that their suppliers and the recruiters they work with adhere to this standard.
- Under the H-2 programs specifically, the work contract must include all significant or material terms and conditions of employment relating to wages, working conditions, and other benefits. This includes:
  - » The beginning and ending dates of the contract period and the location(s) of work;
  - » Payment for transportation expenses incurred;
  - » Specific days workers are not required to work;
  - » The hours per day and the days per week the worker will be expected to work;
  - » The duties for each job to be performed;
  - » The applicable wage rate(s) for each job to be performed;

<sup>2</sup> Part II of the ILO guidelines contains a definition of recruitment fees at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---mi-grant/documents/publication/wcms\\_536755.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---mi-grant/documents/publication/wcms_536755.pdf)

- » The frequency of pay;
  - » Details regarding any housing, meals, or daily transportation to the jobsite that the employer may provide, and any charges to the worker for such services;
  - » That any required tools, supplies, and equipment will be provided to the worker at no charge;
  - » That workers' compensation insurance will be provided at no charge; and
  - » A list of any deductions required by law, which should be reasonable. Any deduction not specified by law is not permissible.
- Governments should prohibit recruiters and employers from confiscating, destroying, or retaining workers' identity documents or contracts.
  - Workers should have access to free, comprehensive, and accurate information regarding their rights and the terms and conditions of their recruitment and employment.
  - Governments should take steps to ensure that when abuses related to recruitment occur within their territory and/or jurisdiction, those affected have access to effective remedies, such as compensation.

## Role of Retailers and Other Downstream Supply Chain Actors in Preventing Abusive Recruitment Practices

Pursuant to the [U.N. Guiding Principles on Business and Human Rights](#), businesses should respect the human rights of their workers, as well as the workers in the businesses linked to their operations, products, or services by their business relationships. Following the *U.N. Guiding Principles*, an increasing number of retailers and other businesses are carrying out due diligence activities related to their suppliers.

As U.S. businesses employ H-2 workers, retailer—such as food retailers whose suppliers employ H-2A workers—should take measures to prevent abusive recruitment practices in their supply chains. This non-binding guidance, together with the FRI's principles for fair recruitment, will help these businesses develop their own strategies for identifying, mitigating, preventing, and remedying abuses in their supply chains. Appropriate business actions include, but are not limited to:

- Endorsing this guidance, utilizing the ILO FRI principles, and requiring that suppliers and other upstream actors in the supply chain follow fair recruitment practices;
- Promoting best practices among their suppliers and other upstream actors in the supply chain;
- Building compliance requirements, including that no recruitment fees or related costs should be charged to or otherwise borne by workers or job seekers, and verification mechanisms into contracts with suppliers and other upstream actors in the supply chain;
- Using credible auditing of suppliers and other upstream actors in the supply chain against the established principles;
- Severing ties with suppliers and other upstream actors in the supply chain who fail to demonstrate a commitment to fair recruitment practices;
- Partnering with organizations, suppliers, and labor recruiters dedicated to ensuring fair recruitment and migrant worker safety;
- When possible, providing training, education, and additional helpful information for suppliers to understand risks and concerns in the worker recruitment sphere, how to identify signs of misleading or fraudulent recruitment tactics, and possible methods for engaging in redress opportunities and future best practices;
- Evaluate whether purchasing practices could increase pressure on suppliers, other upstream actors in the supply chain, and recruiters to use misleading and fraudulent recruitment tactics; and
- Ensuring workers have access to grievance mechanisms for redress of claims related to any abusive recruitment or other labor practices in their supply chain.